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In re Application of: : DECISION ON PETITION
Harari *et al.* : AND
Application No. 09/310,880 : NOTICE OF WITHDRAWAL
Filed: May 14, 1999 : FROM ISSUE
Attorney Docket No. HARI.006USX :

This is a decision on the petition under 37 CFR 1.181 filed January 29, 2001, to withdraw the Notice of Allowance and Issue Fee Due so that an interference may be declared. No petition fee is required.

The petition is **granted** to the extent indicated below.

A Notice of Allowability and a Notice of Allowance and Issue Fee Due were mailed on October 27, 2000. The issue fee was paid on February 5, 2001.

Petitioner asserts that the Notice of Allowance and Issue Fee Due was mailed in error because the application includes claims 63-75 that were copied from U.S. Patent number 5,774,395, and claims 76-80 that were copied from U.S. Patent number 5,828,601, for the purpose of provoking an interference.

A review of the application file record reveals that application claims 63-75, introduced by amendment on May 14, 1999, are substantially identical to claims 1, 9-13, 15-20 and 22 of U.S. Patent number 5,774,395, and that application claims 76-80, introduced by amendment on October 4, 1999, are substantially identical to claims 1-3, 14 and 16 of U.S. Patent number 5,828,601. Pursuant to MPEP 2307.02, when at least one claim presented in an application is not rejectable on any ground and is claiming the same invention as at least one claim of a patent, the examiner should proceed to initiate an interference. Accordingly, the Notice of Allowance and Issue Fee Due was mailed in error.

For the above reason, the petition is **granted** to the extent that the application is hereby withdrawn from issue for consideration of initiating an interference with U.S. Patent nos. 5,774,395, and 5,828,601. The Notice of allowance and Issue Fee Due mailed October 27, 2000, is hereby **vacated**.

Patent and Trademark Office records reveal that the issue fee has been paid. The issue fee is refundable upon written request. If, however, the application is again found allowable, the issue fee can be applied toward payment of the issue fee in the amount identified on the new Notice of Allowance and Issue Fee Due upon written request. This request and any balance due must be received on or before the due date noted in the new Notice of Allowance in order to prevent abandonment of the application.

It is noted that the address of counsel filing the petition differs from the correspondence address of record. If a new correspondence address is desired by counsel, then a change of correspondence address must be promptly filed in this application in accordance with 37 CFR 1.33(a)(2). A one-time courtesy copy of this decision is being sent to the address identified in the petition, but all future communications from the Office will continue to be addressed to the correspondence address of record until otherwise notified by applicant.

Telephone inquiries regarding this decision should be directed to Ed Glick, Special Programs Examiner, at (703) 308-4858.

Telephone inquiries regarding the status of this application should be directed to David C. Nelms, Supervisory Patent Examiner, at (703) 308-4910.

The above-identified application is being forwarded to the examiner for prompt appropriate action, including notifying applicant of the new status of this application.



Rolf Hille, Director
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